

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

LARRY E. WILLIAMS,	)	4:13CV3170
	)	
Petitioner,	)	
	)	
v.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
MICHAEL L. KENNEY,	)	
	)	
Respondent.	)	

This matter is before the court on Petitioner Larry E. Williams’ (“Petitioner” or “Williams”) Motion to Alter or Amend Judgment. (Filing [35](#).) In the Motion, Williams asks me, pursuant to [Fed. R. Civ. P. 59\(e\)](#), to reconsider my October 10, 2014, Order and Judgment dismissing his Petition for Writ of Habeas Corpus. (*Id.*) In particular, Williams asks me to reconsider my finding that the United States Supreme Court’s decision in [Martinez v. Ryan, 132 S. Ct. 1309 \(2012\)](#), did not excuse the procedural default of his ineffective assistance of trial counsel claims. (*Id.*)

“[Rule 59\(e\)](#) motions serve the limited function of correcting manifest errors of law or fact or to present newly discovered evidence . . . . Such motions cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to entry of judgment.” [U.S. v. Metro. St. Louis Sewer Dist., 440 F.3d 930, 933 \(8th Cir. 2006\)](#) (internal citations and quotations omitted).

I have carefully reviewed Williams’ Motion and find that he is not entitled to relief under [Rule 59\(e\)](#). As my October 10, 2014, Memorandum and Order explained, Williams’ ineffective assistance of trial counsel claims were raised in an initial-review post-conviction proceeding, but they were not preserved on appeal. (See Filing [33](#) at CM/ECF pp. 9-10.) As a result, Williams’ ineffective assistance of trial counsel claims were procedurally defaulted. (*Id.*) Under these circumstances, *Martinez* does not provide cause to excuse the default. (*Id.* at CM/ECF pp. 10-11.) See also [Arnold](#)

*v. Dormire*, 675 F.3d 1082, 1086-88 (8th Cir. 2012) (concluding *Martinez* does not apply where ineffective assistance of trial counsel claims were litigated in an initial-review collateral proceeding, but not preserved on appeal).

IT IS THEREFORE ORDERED that Williams' Motion to Alter or Amend Judgment (filing [35](#)) is denied.

DATED this 26<sup>th</sup> day of November, 2014.

BY THE COURT:

*Richard G. Kopf*

Senior United States District Judge

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